



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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OCT 12 2011

RE: MUR 6446
Coos Bay-North Bend Rotary Club

Dear Ms. Costello:

On December 29, 2010, the Federal Election Commission notified your client, the Coos Bay-North Bend Rotary Club, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). On October 4, 2011, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe that the Coos Bay-North Bend Rotary Club violated 2 U.S.C. § 441b(a) of the Act. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Audra Hale-Maddox, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Rotary Club of Coos Bay-North Bend, Oregon MUR 6446

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by Lynnelle Kummelme. See 2 U.S.C. § 437g(a)(1).

II. FACTUAL SUMMARY

This complaint concerns the appearance of Congressman Peter DeFazio, a federal officeholder and federal candidate, at the October members-only meeting of the Rotary Club of Coos Bay-North Bend, Oregon, ("the Club") a 501(c)(4) corporation, shortly before the 2010 general election. The complaint states that on "October 12, 2010, Rep. Peter DeFazio was the special speaker and appeared to be a willing participant at a partisan event/luncheon where he was sponsored, endorsed, and/or promoted by The Coos Bay-North Bend, OR, Rotary International Club, with a 501(c)(3) status." See Complaint at 2. The complaint asserts that the Club is a 501(c)(3) organization and that Rep. DeFazio's appearance before the Club was campaign-related, and therefore alleges that hosting DeFazio's appearance was prohibited by the Internal Revenue Code. See Complaint at 1. While the complaint does not cite any portions of the Federal Election Campaign Act of 1971, as amended, ("the Act") it generally alleges that the endorsement and the costs associated with the "endorsement" Club meeting were in-kind contributions to DeFazio for Congress and Robert Ackerman, in his official capacity as treasurer, ("the Committee") by the Rotary Club.

Congressman Peter DeFazio has represented the congressional district that encompasses Coos Bay and North Bend, Oregon, from the time of his initial election in 1986. Available

1 information indicates that Rep. DeFazio often speaks at Rotary meetings throughout his district,
2 and that his presentation to the Coos Bay-North Bend Rotary Club on October 12, 2010 focused
3 on transportation projects, including a six-year transportation reauthorization bill Rep. DeFazio
4 authored, rather than on the campaign. Complainant attended the Club's meeting on October 12,
5 2010, though according to the Club's response, she is not a Club member, nor was she a guest of
6 a Rotarian, and the meeting was not open to the public. See Club Response at 2. It appears that
7 Complainant attended the meeting because she was concerned about Rep. DeFazio's appearance,
8 as she had previously contacted the Club's president, Jim Molitor, regarding her frustration about
9 the Club's rejection of a campaign appearance by a surrogate for Art Robinson, Rep. DeFazio's
10 opponent in the general election. The Complainant states:

11 It is my understanding that The Coos Bay-North Bend Rotary International Club
12 Board had committed to share their September 14, 2010 meeting with "The
13 American Exceptionalism Tour" with renowned Astronaut Scott Carpenter
14 campaigning for Art Robinson for Congress. ... However, just days before the
15 scheduled event, President Jim Molitor called and cancelled due to 'the Board and
16 Rotary's Bi-Laws state they cannot be involved in anything political.'

17
18 Complaint at 3-4.

19 The complaint states generally that there were "several partisan acclamations in support
20 of Rep. DuFazio from the Rotary Board, members and guests during the partisan event," but
21 gives no indication of what these "acclamations" were.¹ See Complaint at 3. The complaint also
22 acknowledges that "as a sitting Congressman, [Rep. DeFazio] could have spoken ... to 'share his
23 expertise on another subject,' but states Complainant's perspective that "[t]he whole meeting
24 was all about Rep. DeFazio! He applauded himself for the great work he's done and is now

¹ Complainant asserted in the Complaint that she voice-recorded the meeting, but did not include a recording with her submission or quote from the alleged recording in her Complaint. See Complaint at 5.

1 doing and why it is so important for him to continue his progress next term. He clearly implied
2 'VOTE FOR ME!'" See Complaint at 3.

3 After leaving the meeting, Complainant wrote a letter to the Club regarding her concerns
4 about his appearance.² See Complaint at 4 and Complaint Attachment 1, "My Letter," dated
5 October 17, 2010. Subsequently, Complainant filed the complaint in this matter.

6 In response to the Complaint, the Coos Bay-North Bend Rotary Club states that it is not a
7 501(c)(3) organization, it is in fact a 501(c)(4) organization, and "it is not inconsistent with the
8 purpose of the ... club ... for a local Rotary club to host a meeting for members during which a
9 currently-serving legislator provides information to the membership on topics that concern the
10 community, such as the status of current legislative activities. In doing so, the club does not
11 advocate any particular position, though under the 501(c)(4) rules, it may." See Club Response
12 at 1-2 and Exhibit 1 (a 1998 letter from Rotary International personnel stating that Rotary
13 International is a 501(c)(4) organization and the Coos Bay Club has been a member club since
14 1922). The Club's response states that the "October 12, 2010 Club meeting was not open to the
15 public," and was a meeting for Club members. See Club Response at 2 and Affidavit of
16 President James Molitor, attached to the Response as Exhibit 3.

² That letter (and the Complaint to the Commission) appears to rely on information Complainant obtained from a fact sheet published by the Alliance for Justice, an association of over 100 non-profit organizations involved in advocating for the rights of various groups. See <http://www.afj.org/about-afj/>, (last visited July 6, 2011.) In the letter, Complainant quotes a portion of the Alliance for Justice ("AFJ") Fact Sheet on which her allegations rely, in which the AFJ advised its non-profit member organizations that

A 501(c)(3) may NOT host a *federal* candidate's appearance that is campaign-related because doing so would provide a *beneficial* opportunity for the candidate to *address* the public, equal to an in-kind contribution, which is impermissible for a 501(c)(3). The only exception to this general rule ... is when the 501(c)(3) is hosting a candidate debate with at least two candidates and the debate is *nonpartisan* in nature. (Emphasis in original.)

The Club noted that Rep. DeFazio's appearance was not campaign-related, but rather it focused on a general legislative update, not on the upcoming election. Club Response at 2. The Club also notes that, in contrast to the non-partisan officeholder appearance of Rep. DeFazio, it refused the previously-requested appearance by Art Robinson's campaign surrogate, astronaut Scott Carpenter, "after learning of the partisan nature of Mr. Carpenter's presentation." Club Response at 2.

III. LEGAL ANALYSIS

The complaint generally alleges that the Club "violated Federal Election Laws and blatantly disregarded (501)(c)(3) Election Regulations," and appears to suggest, by citing to the Alliance for Justice webpage, that the Club made contributions when it allegedly endorsed Rep. DeFazio and provided facilities and resources for a campaign-related appearance at the members' meeting. *See* Complaint at 1-3. It is unlawful for any corporation to make a contribution in connection with any election to any political office. 2 U.S.C. § 441b(a). Therefore, because the Club is incorporated, if the Club made in-kind contributions in connection with the event, it would have violated 2 U.S.C. § 441b(a) by making the prohibited contributions. However, here, where it appears that Rep. DeFazio attended the Club's monthly member's meeting, which was closed to the public and served as a meeting for members to interact with their sitting Member of Congress regarding legislative issues, and Rep. DeFazio's non-partisan presentation related to transportation topics that affected the region and was not treated by the Club as a campaign event, the available information indicates that Rep. DeFazio's presentation to the Club was a permissible officeholder appearance, that the Club did not endorse Rep. DeFazio during his appearance, and therefore Rep. DeFazio's appearance did not generate an impermissible in-kind corporate contribution from the Club to the DeFazio Committee.

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1 With regard to the alleged endorsement, Rep. DeFazio and the Committee deny that the
2 Club endorsed Rep. DeFazio during his appearance, and the available information appears to
3 support that assertion. See Club Response at 2. Separate from the endorsement argument, the
4 complaint suggests that the Club made a more general in-kind contribution to the DeFazio
5 Committee by using Club resources to host his appearance. The complaint states the Club "made
6 a political contribution to a candidate, Rep. Peter DeFazio.
7 (TIME=CONTRIBUTION=MONEY). ... [The Club] used facilities for candidate, Rep. Peter
8 DeFazio's endorsement." See Complaint at 2. However, as discussed above, the available
9 information indicates Rep. DeFazio appeared before the Club in his capacity as an officeholder
10 and not as a candidate.³

11 Therefore, despite the complaint's general allegations that Rep. DeFazio's appearance at
12 the Club's meeting resulted in a contribution, the available information indicates that Rep.
13 DeFazio's presentation to the Club was a permissible officeholder appearance and did not
14 generate an impermissible in-kind corporate contribution to the DeFazio Committee.
15 Accordingly, the Commission finds no reason to believe that the Rotary Club of Coos Bay-North
16 Bend, Oregon violated 2 U.S.C. § 441b(a) by permitting Rep. DeFazio to make a non-campaign-
17 related officeholder appearance at the Club's October 2010 membership meeting.

³ The Commission does not reach the issue here of how the Supreme Court's decision in *Citizens United v. FEC*, 130 S. Ct. 876 (2010), affects the Commissions' regulations at 11 CFR Part 114 governing the circumstances under which corporations may sponsor Federal candidate appearances or endorse Federal candidates.